

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN DIEGO UNIFIED SCHOOL DISTRICT,

Employer,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 600,

Employee Organization.

Case No. LA-R-167X
PERB Decision No. 170

PERB Order No. JR-10

October 27, 1981

Appearances: Ralph D. Stern, Attorney for San Diego Unified School District; Madalyn J. Frazzini, Attorney for California School Employees Association, Chapter 600.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION AND ORDER

The California School Employees Association, Chapter 600 (hereafter CSEA) requests this Board to reconsider its refusal to establish a representation unit of part-time bus drivers in the San Diego Unified School District. CSEA also petitions the Board to join in its request for judicial review pursuant to section 3542(a) of the Educational Employment Relations Act (hereafter EERA).¹

¹The EERA is codified at Government Code section 3540 et seq. Unless otherwise stated, all references are to the Government Code. Section 3542(a) reads:

(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the

CSEA's petitions are based principally on the argument that the Board determination departed from precedential decisions involving allegedly similar facts and issues and potentially disenfranchises the bus drivers from exercising rights granted by EERA.

CSEA cites Mendocino Community College District (11/4/80) PERB Decision No. 144, in which a unit of part-time certificated faculty was found to be appropriate. However, in that case, the Board noted that the presumption created by section 3545 (b) that all teachers are to be included in a single unit was successfully rebutted by specific evidence demonstrating a lack of community of interest between the full and part-time faculty members and a historic unwillingness of the incumbent representative to cooperate with the part-time teachers.

Petitioner's reliance on Palo Alto Unified School District/Jefferson Union High School District (1/9/78) PERB

board in response to a petition from a an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

Decision No. 84 overlooks the fact that there the Board expressly declined to give retroactive application to its revised single-unit policy announced in Peralta Community College District (11/17/78) PERB Decision No. 77, continuing instead the unit policy in effect at the time of the Palo Alto unit hearing. Arcadia Unified School District (5/17/79) PERB Decision No. 93, also cited by petitioner, found a unit of non-teaching certificated employees to be appropriate. There, the Board emphasized the substantially different skills, duties, professional requirements and supervision that distinguished the non-teachers from those in the established teachers' unit.

The special circumstances represented by these cases were not present in San Diego. The record on appeal, read in light of the standards for unit determination set forth in section 3545,² led this Board to conclude that CSEA has failed to demonstrate that its proposed unit was appropriate.

Petitioner points out no errors of law or fact made by this Board, nor has it offered any evidence which was improperly

2section 3545 states:

(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same

excluded from the original hearing or not then available. Its request for reconsideration is DENIED.

The Board's considerable discretion in the determination of appropriate units is demonstrated by the very limited circumstances under which judicial review of its unit decisions may be obtained. A claim of "special importance" is not sufficient. The Board must agree that such is the case. Here, the special importance attributed by petitioner is the potential disenfranchisement of a group of bus drivers. But, as the Board stated in Pleasanton Joint School District/Amador

employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

(2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

Valley Joint Union High School District (6/25/81) PERB Decision

No. 169:

It is not suggested here that the Board can or will accommodate the interests of every nonrepresented group of school employees. Where and under what conditions the Board will or will not grant additional units, small or otherwise, is best left to case-by-case determination. (p. 7.)

In Pleasanton, two distinguishing facts existed: (1) the petitioned-for employees were psychologists; no psychologists were included in the existing unit and (2) the existing unit from which they had been excluded was created through a voluntary arrangement between the employer and the exclusive representative.³ As the Board pointed out:⁴

. . . the legitimate desires of residual islands of unrepresented school employees . . . is the consequence, not of application of the statutory criteria governing unit determinations, but of voluntary recognitions and stipulations as to appropriateness entered into by the parties and accepted without factual support by this Board. (p. 5.)

The term "special importance" is not defined by the PERA. But, in the final analysis, petitioner's position reflects

³In this instance, full-time bus drivers are included in the existing unit which was established by PERB order pursuant to a full evidentiary hearing.

⁴Member Moore acknowledges the existence of the distinguishing factors cited above, but notes that she did not find them sufficient to mandate the different result reached by the majority in Pleasanton.

nothing more than disagreement with the Board's exercise of the discretion vested in it by the California Legislature. Petitioner's request for joinder in seeking judicial review is DENIED.

PER CURIAM